IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 1074

TOM BROWN, et als.

Petitioners

versus

RICHARD E. BROWN, JR., ADMINISTRATOR, DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

and

CROWN ZELLERBACH CORPORATION
BOGALUSA MILL DIVISION

Respondents

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUSIANA ON BEHALF OF THE ADMINISTRATOR OF THE DIVISION OF EMPLOYMENT SECURITY, DEPARTMENT OF LABOR, STATE OF LOUISIANA

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INDEX OF SUBJECT MATTER

	Page
Statement of the case	2, 3
Argument as to non-compliance with Rule 23, Section F, Rules of the Supreme Court of the United States	3, 4
Argument as to the question of jurisdiction	4, 5
Argument as to failure of petitioners to show discrimination	6, 7, 8
Argument on the merits	8, 9, 10
Conclusion	17, 18
Certificate of Service	18

TABLE OF CASES

Adams v. Retired Board of Indiana Emp. Sec. Div., 98 N.E. 2d 681	14
Bachman Sons v. Carpenter, 80 N.W. 2d 123	13
Bartlett v. Adm., 115 A. 2d 671	11
Brown v. Brown, 158 So. 2d 305	16, 17
Cameron v. DeBoard, 370 P. 2d 709	13
Copen v. Hix, 43 S.W. 2d 582	14
George v. Catherwood, 223 N.Y.S. 2d 326	14

INDEX OF SUBJECT MATTER—(Continued)

	Page
Henzel v. Cameron, 365 P. 2d 498	13
Local No. 658 Boot & Shoe Workers Union v. Brown Shoe Co., 87 N.E. 2d 625	11
Olischak v. Unemp. Comp. Board of Review, 159 A. 2d 750	14
Quenner v. Magnet Mills, Inc., 167 S.W. 2d 1	11
Steele v. Louisville and Nashville RR Co., 323 U.S. 192, 65 S.Ct. 226	16, 17
Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210, 65 S.Ct. 235	16
Unemp. Comp. Com. v. Martin, 45 S.E. 2d 385	14
U. S. Steel v. Board of Rev., 150 A. 2d 361	14
United States Steel Corporation v. Wood, 114 So. 2d 551	11, 12, 13

TABLE OF STATUTES AND OTHER AUTHORITIES

American Jurisprudence, Volume 54, Section 191	5
American Jurisprudence, Volume 54, Section 220	6
American Jurisprudence, Volume 54, Section 221	4
LSA-R.S. 23:1601(4)	8, 9, 10, 14, 15

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STATEMENT OF THE CASE

Petitioners are all members of the United Papermakers and Paperworkers, AFL-CIO, sometimes hereinafter referred to simply as the Union. For reasons best known to the Union itself, its members who are employed in Crown Zellerbach's Bogalusa, Louisiana plant are divided into two segments designated as Local 189 (composed of only white employees) and Local 189A (composed of only colored employees). The separation of this Union into two segments was a determination made by the Union itself; a matter in no way involving the employer and concerning which the employer did not participate.

For reasons which do not appear to be too material to a resolution of the issue raised by this Application, the Union called a strike at Crown Zellerbach's Bogalusa, Louisiana plant. As a result of this strike, a picket line was duly established.

After petitioners became unemployed as a result of the calling of this strike, they all filed claims for unemployment compensation benefits under the provisions of the Louisiana Employment Security Law. Being of the opinion that claimants were both interested in and participating in the strike, the Administrator of the Division of Employment Security issued an initial determination disqualifying all claimants who were members of the United Papermaker's and Paperworkers, AFL-CIO, the striking union.

Claimants subsequently appealed the initial determination to the Appeals Referee who conducted a hearing on the issues. Based on the evidence adduced at this hearing, the Appeals Referee affirmed the administrative determination. On a further appeal to the Louisiana Board of Review, the decision of the Appeals Referee was affirmed.

Petitioners then instituted suit in the Twenty-Second Judicial District Court, Parish of Washington, State of Louisiana. The District Court, for written reasons assigned, affirmed the ruling of the Louisiana Board of Review. On an appeal to the Court of Appeal of the First Circuit, the disqualifications were once more affirmed in an opinion which we think clearly and correctly analyzed the real question presented. Claimants then applied to the Supreme Court of Louisiana for Writs of Certiorari and Review to review the ruling of the Court of Appeal. Their Application was denied as the Supreme Court felt that the ruling of the Court of Appeal was correct. The present petition was then filed with this Honorable Court.

ARGUMENT IN SUPPORT OF DISMISSAL OF APPLICATION FOR WRITS

Petitioners' Application to this Honorable Court for Writs of Certiorari should be dismissed on the following grounds.

1. Under Section F of Rule 23 of this Honorable Court, an Application for Writs must affirmatively show specifically at which point in the proceeding a Federal question is raised, the specific manner in which the Federal question was raised and the disposition of the Federal question made by the State Court. We may analyze petitioners' Application in vain but we will not find any affirmative statement tending to show the raising of a Federal question by formal pleadings at any stage in the proceeding prior to this Application. The reason is simple. A Federal question has never been raised through pleadings. The only inkling of the possible existence of a Federal question is contained in petitioners' Application to the Louisiana Supreme Court for Writs to review the ruling of the

Court of Appeal. Even at that stage, the issue was not properly and specifically raised.

"The requirement of a record showing of a Federal question in the state court from which an appeal to the United States Supreme Court is sought does not mean that the record must show in direct and positive terms that the necessary Federal question was raised and a decision thereon made. It is sufficient if it appears by clear and necessary intendment that the question must have been raised and must have been decided in order to have induced the judgment. No particular form of words need be used in order that the Federal question may be said to be involved. It is not, however, enough to show that a Federal question might have arisen in and been applicable to the case, or that there may be hidden in the record a question which, if it had been raised, would have been of a Federal nature, or that the state court assumed the validity of the state statute or treated as settled the question of its validity. The Court is not at liberty to resort to forced inferences and conjectural reasonings, or to possible or even probable suppositions as to the points raised and decided by the state court. There must be averments so distinct and positive as to place it beyond question that the party bringing the case up for review intended to assert a federal right."[1]

For these reasons, we respectfully submit that the Application filed with this Honorable Court does not comply with the rule which specifically sets forth in detail the elements which must be contained in an Application for Writs.

2. There being no Federal question involved, this Honorable Court lacks jurisdiction to entertain petitioners' Application for Writs. A thorough analysis of the issues raised in

[1] 54 Am. Jur. 854, § 221. Citing *Black v. Cutter Laboratories*, 351 US 292, 100 Led. 1188, 76 S.Ct. 824.

this litigation will clearly disclose that a Federal question, a necessary element to confer jurisdiction on this Honorable Court, has not been raised, and in fact does not exist. It has never been contended by pleadings at any stage of this proceeding in the State Court that the Louisiana Employment Security Law in any manner violates any provision of the Constitution of the United States. The sole issue which was ever raised involved an interpretation by the State Court of the provisions of the State Statute.

"A real and substantial Federal question is essential to the jurisdiction of the United States Supreme Court over judgments of state courts. The Federal Supreme Court will not assume jurisdiction to review a state judgment where the asserted Federal right is so wanting in foundation and so unsubstantial as to be devoid of all merit, and frivolous, or where it is at most conjectural as to whether the party will be deprived of any constitutional right. The Federal question must be one that is not merely abstract or moot. The mere averment of a Federal question or some claim of constitutional right is not sufficient unless it can be shown that the question is a real one, and that there is a real and substantial controversy which deserves serious consideration. Mere averment of a Federal question without color of ground therefor is insufficient."[2]

This Honorable Court has, on a number of occasions, consistently held that, if a decision of a State Court is adequately founded on State grounds, this Court will not interfere with the ruling of the highest State Tribunal. Clearly, the statutory grounds on which the Court of Appeal decision, as affirmed by the Louisiana Supreme Court through its denial of claimant's Application for Writs, was predicated are clearly adequate and fully sustain the Court's conclusion.

[2] 54 Am. Jur. 825, § 191.

If a decision of a higher State Tribunal rests on both State and Federal grounds, this Court will not assume jurisdiction to review the matter under the guise of a Federal question if the State grounds, on which the decision was predicated, are sufficient to support said decision.

Not only must it be shown that a Federal question has been raised and disposed of by the State Court, in addition, it must also be affirmatively shown that a disposition of the Federal question is necessary to sustain the decision of the State Court.* Since this case does not involve a Federal question, the determination of which is essential to sustain the State Court decision, we respectfully submit that petitioners' Application should be dismissed for want of jurisdiction on the part of this Honorable Court.

3. The record is absolutely void of any showing of discrimination against petitioners because of their race. The fact that the members of the United Papermakers and Paperworkers, AFL-CIO, employed in the Bogalusa, Louisiana plant of Crown Zellerbach, are designated as two separate locals, one composed of white employees and the other of colored employees, does not in itself remotely raise any discrimination on account of race. This is particularly true when we analyze the case which was actually presented to the State Court for consideration.

As was stated in the statement of the case hereof, the breaking down of union membership into two locals was a matter strictly within the Union itself. If this Union saw fit to so arrange its affairs, this is a matter which concerned neither Crown Zellerbach nor the Administrator of the Division of Employment Security. If one of the segments of this Union was

*54 Am. Jur. 852, § 220.

acting capriciously and arbitrarily to the detriment of the other, a question of illegal discrimination might, in all probability exist, but it would have to be raised in a suit against the Union brought for that specific purpose. The fact that some Union members may not directly benefit, or may even suffer some inconvenience, as a result of the actions of the Union, it does not necessarily follow that these Union actions are discriminatory or intended to benefit some at the expense of others. These are occurrences which are sometimes avoidable.

This proceeding is simply a judicial review duly authorized by State Statute of an administrative ruling on claims for unemployment compensation benefits. It is not a suit to question the existence or the validity of intra-union arrangements.

A proceeding instituted to judicially review a ruling of the Louisiana Board of Review in connection with claims for unemployment compensation benefits is neither a proceeding to question union arrangements nor a proceeding to question the validity of actions taken by an employer in derogation of rights of its employees. Even if it were true, and this is certainly not established by the record, that these petitioners were discriminated against by their employer with respect to their contract of employment, this discrimination would have to be raised in a suit brought for that specific purpose and could not be raised in a proceeding to review an administrative denial of unemployment compensation benefits. The only issues which can be legally raised in this proceeding relate to the rights of these petitioners to receive unemployment compensation benefits under the particular circumstances of their unemployment.

The fact that all these petitioners happened to be members of the colored race had nothing whatsoever to do with their disqualification from the receipt of benefits. The sole reason for their disqualification was that they are all members of a

union which called a strike, which strike resulted in their unemployment. Under the clear and unequivocal provisions of the Louisiana Employment Security Law, all persons whose unemployment is due to a labor dispute in which they are either participating or interested are disqualified from the receipt of unemployment compensation benefits during the existence of such labor dispute.[4] Therefore, when the Union of which these petitioners are all members effectuated the strike which brought about their unemployment, the Administrator had no alternative but to disqualify them. Had any member of the segment of the Union composed of all white employees filed claims for benefits, they, likewise, would have been disqualified.

We, therefore, respectfully submit that the record in this case is absolutely void of any showing which would tend to establish that petitioners were disqualified from benefits because of their race.

ARGUMENT ON THE MERITS

As a result of a strike officially sanctioned by the United Papermakers and Paperworkers, AFL-CIO, all employees of Crown Zellerbach's Bogalusa, Louisiana plant who were members of Locals 189 and 189A of said Union became unemployed. While the record indicates that the members of Local 189 voted overwhelmingly in favor of the strike the members of Local 189A voted not to strike. When the strike became effective, the membership of Local 189A was officially notified by the International of the United Papermakers and Paperworkers, AFL-CIO, that strike benefits were available and, in fact, a check to cover these benefits was duly forwarded to the Local. Although the check was returned by the Local to the Parent Union, the Local was, nevertheless, notified that

[4] LSA-RS 23:1601(4)

these strike benefits were being held available at any time the membership of Local 189A desired to accept them.

Under the agreement between Crown Zellerbach and the United Papermakers and Paperworkers, AFL-CIO, a copy of which was filed in the record, it will be noted that both Locals were referred to simply as the Union. It will further be noted from a copy of the Constitution of the United Papermakers and Paperworkers, AFL-CIO, which is also filed in the record, that any member of the Union who crosses a picket line duly set up where a strike has been called with the sanction of the Union, such member immediately forfeits his membership in the Union. Since the strike in question was fully sanctioned by the Union, neither the members of Local 189 nor 189A were in any position to report to work as they were prohibited from crossing the picket line so long as the strike continued and so long as they retained their membership in the Union.

The President of Local 189A, Tom Brown, officially representing all the members of his Union, testified that, under the terms and contract existing between the members and the Union, a strike of any Local duly authorized by the Union required that all other Locals, whose members were members of the Union, were obligated to join in the strike.

The Statutory provision involved in this proceeding is LSA-R.S. 23:1601(10), which reads:

§ 1601. Disqualification for benefits

An individual shall be disqualified for benefits:

* * *

(10) For any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is

or was last employed, but such disqualification shall not apply if it is shown to the satisfaction of the Administrator that he is not participating in or interested in the labor dispute which caused his unemployment . . ."

The ultimate issue which must be considered by this Honorable Court is whether or not petitioners were "participating in or interested in the labor dispute which caused their unemployment." It is conceded that the members of Local 189A, as well as Local 189, are unemployed due to "a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

From the very wording of the Act, as well as the universal jurisprudence, it is obvious that the claimant must bear the burden of proving that he is not participating or interested in the labor dispute before he can come within the exception provided in § 1601(c), supra.

Even though the burden of proof is on the claimant, we submit that, notwithstanding that the Administrator and the employer do not have the burden of proof, they have, in fact, borne the burden of proof in this case by an overwhelming preponderance of the evidence and have shown that the members of Local 189A of the United Papermakers and Paperworkers, AFL-CIO, are in every legal and practical sense of the word "participating in or interested in the labor dispute which caused their unemployment."

It cannot be disputed that the members of Local 189 and 189A are members of the same identical union, namely, United Papermakers and Paperworkers, AFL-CIO, and that the members of both Local's have delegated to their common Union their rights in all matters effecting the relationship between Crown-Zellerbach Corporation and the members of the Union.

They have delegated their rights to speak for themselves to the Union and have agreed to be bound by the action of the Union. By virtue of their membership, they are legally and automtically bound by the action of the Union and, by virtue thereof, they cannot act independently of the Union. They have legally constituted the Union as their Agent and it is universally conceded that the principal is bound by the legal acts of his Agent.

Indeed, it is elementary that the act of the Agent is the act of the principal. Since the members of Local 189A are one and the same with the Union, the interest of the Union is one and the same with the interest of the members of the Union. This relationship in and of itself, without the necessity of considering other factors, clearly establishes the fact that the members of Local 189A *are* participating in and interested in the labor dispute which caused their unemployment.

A thorough examination of the jurisprudence throughout the United States reveals that the Courts in many States have consistently held that a member of a local union, not itself on strike, is not entitled to unemployment compensation where his unemployment is due to a strike engaged in by another local union, and both local unions belong to the same national or international union.

The leading case which we have found wherein the factual situation, in all essentials, was the same as the case now under consideration is the case of *United States Steel Corporation v. Wood*, which was decided by the Supreme Court of Alabama in 1959, reported at 111 So. 2d at Page 551. The facts of this case were identical to the facts at hand. There were two locals of the same union organized at the United States Steel Corporation's plant. One of the locals went on strike and effectively shut down the entire operation. The non-striking local then applied for unemployment insurance benefits. The Alabama Court in interpreting their Statute, which is

identical to the Louisiana Statute in all pertinent respects, stated:

> "It seems to us that Usher is to be distinguished from the instant case. In Usher the claimant had absolutely no affiliation with the striking union, and it was on that basis, and that basis alone, that the statute was interpreted as permitting benefits when the claimant's unemployment is 'because of a "labor dispute" in which he was in no way involved and the causes of which unemployment he, his agents or organization were powerless to avert.' In the instant case, the claimant's relationship with the striking local is thus stated in the Court of Appeals' opinion on rehearing:
>
> > "'That the claimant was a member of United Steelworkers of America, CIO, that the production and maintenance employees of employer's Ore Mines & Quarries Division (including the employees at the ore conditioning plant and the claimant and other employees at Ore Mine No. 7) were represented by United Steelworkers of America, CIO, as the exclusive bargaining agent; that such production and maintenance employees were covered by one collective bargaining agreement negotiated by the same bargaining representatives and executed in the name of and on behalf of the same Union, namely, the United Steelworkers of America, CIO; and that the strike causing the unemployment of claimant was actually terminated as a result of telegraphic orders or instructions from the Chief Executive Officer of United Steelworkers of America, CIO.'"

> "We think the 'restrictive' provisions of Subdiv. A, § 21 i, Tit. 26, as amended, supra (for a discussion of this statute see Usher, supra, including the minority opinion), denote a clear legislative purpose and intent and that such purpose and intent should not be extended beyond the holding in Usher. To hold that claimant is entitled to unemployment benefits in this case would be to extend that holding. We find no warrant to do so by judicial interpretation."

It is clear that the Supreme Court of Alabama recognized the validity of the argument which we have made above that the members of a union are obviously bound by the actions of the union and cannot be heard to say that the interest and participation of the union is not the interest and participation of the membership.

In the case of *Cameron v. DeBoard*, decided by the Supreme Court of Oregon in 1961, reported at 370 P. 2d 70, the Court pointed out that the trier of fact must always consider union membership in a common union in deciding whether the claimant is eligible for unemployment insurance benefits.

In the recent case of *Burchuan Sons v. Carpenter*, decided by the Supreme Court of Nebraska and reported at 89 N.W. 2d 123, the Court said:

> "Members of non striking unions are not entitled to benefits even though it was a strike by one union alone that produced their unemployment."

In another Oregon Supreme Court decision, *Henzel v. Cameron*, reported at 365 P. 2d 98, the Court said:

> "It is conceded that unemployment due to a labor dispute may seem 'impersonal' to the individual

worker when he has no selfish interest in the outcome of the dispute, but so long as he is a *member* of a labor movement whose leaders embrace the causes of economic strife in their dealings with management, he must also accept the attending hardships inherent in such activity." (Emphasis ours)

Other cases which support this view are: *Quebner v. Magnet Mills, Inc.*, 167 S.W. 2d 1, Tennessee Supreme Court; *Copen v. Hix*, 13 S.W. 2d 382, West Virginia Supreme Court; *Adams v. Review Board of Indiana Emp. Sec. Div.*, 98 N.E. 2d 681; *Bartlett v. Adm.*, 115 A. 2d 67; *Local No. 658 Boot & Shoe Worker's Union v. Brown Shoe Co.*, 87 N.E. 2d 625; *Unemp. Comp. Com. v. Martin*, 45 S.E. 2d 385; *George v. Catherwood*, 225 N.Y.S. 2d 326; *Olaschak v. Unemp. Comp. Board of Review*, 159 A. 2d 750; and *U. S. Steel v. Board of Rev.*, 150 A. 2d 361.

Many of these cases, in addition to basing the disqualification on the principle that the action of the union is the action of the membership, also point out the extreme inequity in permitting a union to finance a strike with unemployment insurance benefits which the employer pays by calling a strike in only one local, which effectively paralizes the employer's entire operation in the hope that the members of all the other locals who are unemployed because of the strike may be financed during the strike with unemployment insurance benefits. It is a universal principle in the field of unemployment insurance that the State remains "neutral" and does not, through the enactment of unemployment benefits legislation, intend to assist either side in a manner which would be prejudicial to the other. The language of the Act itself makes it clear that the purpose of LSA-R.S. 23:1601(4) was to give neutrality to our Employment Security Act with respect to unemployment caused by strikes or other labor disputes, unless

the unemployed worker can show in fact and in law that he has no legal interest or participation in the labor dispute. Not only have the members of Local 189A failed to show that they have no interest in and are not participating in this strike, on the contrary, it has been clearly shown that they have a very real factual and legal interest in and are participating in this strike.

It would, therefore, do violence to the clear intent and purpose of the Employment Security Act if benefits should be allowed in this case. If the members of the United Papermakers and Paperworkers, AFL-CIO, who have bonded together for their mutual interest, expect the resultant benefits to themselves in a common cause and purpose they must stand ready to accept the liabilities and obligations which they have mutually pledged to each other and should not, either in law or good conscience, expect to be financed by Federal or State tax monies which are paid into the common fund by all of the employers throughout the State, but rather they should finance themselves through strike benefit funds which were tendered to them by their Union and rejected by them in the hope that they would receive the larger benefit amount provided under the Employment Security Act.

The natural, human tendency to feel sympathy toward those who are financially depressed must be fought against and logic and reason must prevail if the noble and commendable purposes, for which unemployment insurance was created, are to continue to be served.

We, therefore, respectfully submit that the facts in this case and the legal results to be drawn therefrom clearly show that the petitioners were interested in or participating in the labor dispute which caused their unemployment and are, therefore, not within the exception as stated in §1601(4), supra.

and are, therefore, disqualified from the receipt of unemployment insurance benefits during the time that the labor dispute was in active progress at the Crown Zellerbach Corporation Plant in Bogalusa, Louisiana, commencing on August 27, 1961.

In support of the petition for the granting of Writs by this Honorable Court, Counsel for petitioners asked this Court to invoke the doctrine of the *Steele* and *Tunstall* cases.[1] While we have no quarrel whatsoever with the doctrine announced in these cases, we completely fail to see its relevance to the issue presented for determination in this proceeding. The *Steele* and *Tunstall* cases were both suits brought against the Union itself wherein it was contended that, because of certain Union actions, the complainants were arbitrarily discriminated against without even having been afforded an opportunity for a hearing. Clearly, these cases have nothing whatsoever to do with the issue raised in this proceeding.

We believe that the Court of Appeal of the First Circuit, State of Louisiana, clearly and correctly analyzed and resolved the real issues raised herein in the last paragraph of its opinion, which reads as follows:[2]

> "Our careful consideration of the numerous cases dealing with the subject matter presently under consideration, reveals the rationale of the majority rule, denying benefits under circumstances akin to those herein encountered, is two-fold. First, the action of the union is the action of the membership and he who accepts the benefits of collective bargaining through an organizational representative must likewise accept the attending hardships, if any, resulting

[1] *Steele v. Louisville and Nashville RR Co.* 323 U.S. 192, 65 S.Ct. 226; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210, 65 S.Ct. 235.

[2] *Brown, Tom et al. v. Brown*, 158 So. 2d 365, 1st Cir. State of La.

from the actions of the agency to which he has delegated the power to represent him in negotiations with his employer with respect to wages and working conditions. It is elementary that a principal is bound by the actions of his agent performed within the scope of the delegated authority. Secondly, to permit receipt of benefits under circumstances attending the case at bar, is to endorse the harsh inequity of compelling the employer to at least partially finance the strike against him. LSA-R.S. 23:1531 — 23:1571, inclusive, provides for the payment by employers of substantial contributions into the fund from which the benefits due unemployed persons are paid. As pointed out in numerous cases from other jurisdictions there is obvious inequity in permitting a union the advantage of financing a strike at the expense of the employer with whom negotiations are in progress."

CONCLUSION

For the reasons hereinabove assigned, we respectfully submit that petitioners' Application for Writ of Certiorari does not comply with Rule 23, Section F, of the rules of this Honorable Court. There is no showing in the record that a Federal question was ever properly raised, passed on by the State Court, or that the determination of a Federal question is necessary to a decision in the case, as the decision of the State Court is adequately founded on State grounds. The record is absolutely bare of any evidence or substantial contention that petitioners were discriminated against in any manner in the application of the provisions of the Louisiana Employment Security Law because of their race.

We finally respectfully further submit that the decision of the State Court is clearly correct and fully justified under

State Law and that it should, accordingly, be sustained and petitioners' Application dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the above Brief have been mailed postage prepaid, to Mr. Revius O. Ortique, Jr. Attorney for petitioners, 2140 St. Bernard Avenue, New Orleans, Louisiana, and to Mr. Bascom D. Talley, Jr., Attorney for former employer, Talley, Anthony, Hughes & Knight, 322 Columbia Street, Bogalusa, Louisiana.

Baton Rouge, Louisiana, this 27th day of May, 1964.

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